

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: July 08, 2010

Decision on: July 22, 2010

**WRIT PETITION (CIVIL) 720/2010 & CM 1496/2010(stay)
& CM 4631/2010(for vacation of interim stay)**

DELHI SIKH GURUDWARA MANAGEMENT
COMMITTEE & ANR.

.... Petitioners

Through: Mr. K.T.S.Tulsi, Sr. Advocate
with Mr. Raj Kamal, Advocate

versus

MOHINDER SINGH MATHARU

.... Respondent

Through: Mr. Gurbaksh Singh and
Ms. Meenakshi Sharma, Advocates

WRIT PETITION (CIVIL) 721/2010 & CM 1498/2010(stay)

DELHI SIKH GURUDWARA MANAGEMENT
COMMITTEE & ANR.

.... Petitioners

Through: Mr. K.T.S. Tulsi, Sr. Advocate
with Mr. Raj Kamal, Advocate

versus

JATHEDAR KULDIP SINGH
BHOGAL & ANR.

.... Respondents

Through: Mr. Gurbaksh Singh and
Ms. Meenakshi Sharma, Advocates

CORAM: JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

J U D G E M E N T

1. The short question that arises for determination is whether the Delhi Sikh Gurudwara Management Committee ('DSGMC') is a

public authority within the meaning of Section 2(h) of the Right to Information Act, 2005 ('RTI Act')?

2. On 22nd July 2009, the CIC held the DSGMC, which is established under Section 3 of the Delhi Sikh Gurudwaras Act, 1971 ('DSG Act') to be a public authority under the RTI Act. The Respondents in both writ petitions were initially unsuccessful in seeking information from the DSGMC pursuant to the applications filed by them under the RTI Act. In the second appeal filed by each of them the CIC passed orders directing the DSGMC to provide them the information before 5th August, 2009. When there was continued non-compliance by the DSGMC, the CIC directed notice to the Public Information Officer ('PIO'). Thereafter, a notice was sent to the General Manager of the DSGMC. He was unable to give any valid explanation for not complying with the CIC's orders. Accordingly, a penalty of Rs.25,000/- was levied on the General Manager and the penalty was asked to be recovered from his salary. Aggrieved by the said orders, the DSGMC has filed these writ petitions.
3. While directing notice to the Respondent, subject to the deposit of Rs.5000/- as litigation expenses, this Court by an order dated 4th February 2010 directed a stay of the impugned orders.

4. This Court has heard submissions of Mr. K.T.S. Tulsi, learned senior counsel appearing for the DSGMC and Mr. Gurbaksh Singh, learned counsel appearing for the Respondents.
5. Mr. Tulsi referred to the Preamble, the long title and the various provisions of the RTI Act to impress upon the Court that the general purpose of the RTI Act was to promote transparency and accountability and contain corruption in the government and its instrumentalities. The Preamble further indicated that the expectation was that revelation of information which might lead to conflict with other public interests including “efficient operations of the Government” had to be harmonized “while preserving the paramountcy of the democratic ideal”. It is accordingly submitted that the RTI Act was not intended to apply to institutions like the Petitioner.
6. Turning to Section 2(h) of the RTI Act, Mr. Tulsi submitted that the words “and includes any” occurring after Section 2(h)(d) had to be read continuously and, therefore, even if a body fell within the definition of a Public Authority under Section 2(h) (a) to (d), such a body would have to be substantially financed “directly or indirectly by funds provided by the appropriate Government”. In other words, according to Mr. Tulsi, there cannot be any disjunctive reading of the latter portion of Section 2(h) and that it had to be read as one continuous whole. He submits that if the

definition is so read then certainly the Petitioner, which may have been established by a law made by the Parliament, was not a public authority, since it did not receive funds “directly or indirectly” from any appropriate Government.

7. Mr. Tulsi placed reliance on the Judgment of the Division Bench of the Bombay High Court in *Nagar Yuwak Shikshan Sanstha v. Maharashtra State Information Commission* MANU/MH/0813/2009 in support of his submissions. Referring to the provisions of the DSG Act, Mr. Tulsi submitted that the Petitioner was intended to be an autonomous statutory body without interference by the Government. Relevant to the RTI Act, Mr. Tulsi has placed reliance upon the decisions of other High Courts including *Asian Education Charitable Society v. State of Uttarakhand* MANU/UC/0014/2010, *The Public Information Officer and Secretary v. Karnataka State Information Commission* 2009 (6) KarLJ 2009, *Dattaprasad Co-operative Housing Society Ltd. v. Karnataka State Chief Information Commissioner* AIR 2009 Kant 1, *The Bidar District Center Co-op Bank Ltd. v. Karnataka Information Commission* ILR 2008 KAR 3830, *Dr. Panjabrao Deshmukh Urban Co-operative Bank Ltd. v. The State Information Commission* AIR 2009 Bom 75, *Smt. Amba Joshi v. Army Welfare Education Society* CIC/WB/A/2008/000634, *Shri Girdhari Lal Bhargava v. All India Chess Federation*

CIC/PB/C/2008/00947/LS, Group Captain M. Kapoor v. Col. S. Thapar CIC/AT/A/2006/00123.

8. As regards the general approach that the Court should adopt while interpreting statutes, Mr. Tulsi relied upon the decisions in *State (Delhi Administration) v. Puran Mal* (1985) 2 SCC 589, *Paras Ram v. State of Haryana* (1992) 4 SCC 662, *J. Jayalalitha v. Union of India* (1999) 5 SCC 138, *The State of Bombay v. R.M.D. Chamarbaugwala* AIR 1957 SC 699, *Pooran Singh v. State of M.P.* AIR 1965 SC 1583, *Rajesh Kumar v. Dy. CIT* (2007) 2 SCC 181, *Sahara India (Firm) Lucknow v. Commissioner of Income Tax* (2008) 14 SCC 151, *The Star Co. Ltd. v. Commissioner of Income Tax (Central) Calcutta* (1970) 3 SCC 864, *Hyderabad Asbestos Cement Product v. UOI* (2000) 1 SCC 426 and *M/s. Sahney Steel and Press Work Ltd. v. CIT, A.P.-I, Hyderabad* AIR 1997 SC 3968. Mr. Tulsi has also placed reliance upon certain passages of Principles of Statutory Interpretation by G.P. Singh on conjunctive and disjunctive words.
9. Mr. Gurbaksh Singh, on the other hand, referred to the fact that the DSGMC was constituted by the DSG Act. He submitted that as far as the Petitioner was concerned, it squarely fell within the definition of Section 2(h)(b) of the Act and there was no need to look further to examine if the body was substantially financed

“directly or indirectly by funds provided by the appropriate Government”.

10. This court has considered the above submissions. There is a difference in the way Section 2(h) reads as published in many of the Bare Acts and how it reads as published in the Official Gazette. Section 2(h) as published in the Bare Act reads as under:

“2 (h) “public authority” means any authority or body or institution of self-government established or constituted,-

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any-

(i) body owned, controlled or substantially financed;

(ii) non-Government Organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;”

Whereas Section 2(h) as published in the Official Gazette reads as under:

“2 (h) “public authority” means any authority or institution of self-government established or constituted-

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government,

and includes any-

- (i) body owned, controlled or substantially financed;
- (ii) non-Government organization substantially financed,

directly or indirectly by funds provided by the appropriate Government;

11. A comparison of the two ways of depicting Section 2(h) makes it clear that in terms of the ‘official’ version, which is therefore the reliable one, the words “and includes” is not joined to clause (d) but starts in a new line from the left extreme margin. The categories of bodies or institutions or authorities covered by Sections 2(h) (a), (b), (c) and (d) are therefore ‘stand alone’ authorities or bodies. The words “and includes” beginning in a fresh line from the left margin is intended to indicate another set of bodies which may not fall within the categories of Section 2(h) (a), (b), (c) and (d).

12. This Court is unable to accept the submission made by Mr. Tulsi that the words “and includes” is not meant to be read disjunctively and, therefore, although a body may fall within the Section 2(h), (a), (b), (c) and (d) it would nevertheless have to satisfy the requirement of being “directly or indirectly” substantially financed by the appropriate Government. There is no scope for reading the provisions in the manner suggested by Mr. Tulsi.

13. It is plain that Section 2(h)(b) applies in the instant case. The DSG Act is a law made by the Parliament. The DSGMC is a body constituted under Section 3 of the DSG Act. The DSGMC is not a body made under any law but a body made by a law. There is a distinction between the use of the words “by any law made by Parliament” and “by or under the Constitution”. The Parliament has consciously not used the words “by or under” in sub-clause (b) of Section 2(h). In other words, once the body is established or constituted by the law made by Parliament, it would be a ‘public authority’ under Section 2(h)(b).

14. As regards the words “and includes”, they are disjunctive and indicative of a separate set of entities. The discussion in the recent judgment of this Court in *Krishak Bharti Cooperative Ltd. v. Ramesh Chander Bawa* 2010 (V) AD (Del) 405 may be usefully referred to. There the question was whether a multi-state co-operative society is a ‘public authority’ within the meaning of Section 2(h)(d)(i) of the RTI Act. It is in that context that in para 13, it was observed:

“13. Before embarking on a more detailed analysis it is necessary to recapitulate the law concerning interpretation of the conjunctive “and includes”. The expression “and includes” connotes that those entities which answer the description following those words need not fall within the definition of entities that precede those words. The word “includes” is generally

understood in statutory interpretation as enlarging the meaning of the words or phrases in the body of the statute. In ***CIT v. Taj Mahal Hotel (1971) 3 SCC 550*** the Supreme Court was considering whether the word ‘plant’ in Section 10 (2) of the Income Tax Act 1922, include sanitary pipes and fittings in a building as well? Section 10(5) had defined ‘plant’ to include “vehicles, books, scientific apparatus, surgical equipment purchased for the purpose of business.” The Court held:

“The word “includes” is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include.”

15. This Court is, therefore, not persuaded to accept the submission made by Mr. Tulsi as regards the interpretation to be placed on the words “and includes”. It is also unable to accept the submission that a body that falls within the definition of public authority under Section 2(h) (a) to (d) must be directly or indirectly substantially financed by funds provided by the appropriate Government. That requirement would only apply to the latter part of Section 2(h) of the RTI Act, i.e the bodies falling within the meaning of Section 2 (h) (d) (i) or (ii). Since it is nobody’s case that the Petitioner falls within the ambit of the latter part of Section 2 (h) (d) (i) or (ii) of the RTI Act, that aspect need not be examined any further.

16. The decisions referred to by Mr. Tulsi on the interpretation to be placed on the RTI Act were delivered in the context of bodies, none of which fell within the definition of Section 2(h)(b) of the RTI Act. It is not possible, therefore, to adopt the approach adopted by those High Courts in the said decisions for determining whether the bodies concerned were public authorities or not. It is also not possible to read the long title and the Preamble in the manner suggested by Mr. Tulsi so as to confine the entire RTI Act only to Government or instrumentalities of the Government. The fact that the legislature has enacted Section 2(h) in the manner it has, clearly indicates that a whole range of public authorities are sought to be brought within the ambit of RTI Act. It hardly needs mention that there are a large number of bodies that are constituted by enactments both of the Parliament as well as the State Legislatures. Once it is shown that a body has been constituted by an enactment by Parliament or State Legislature, then nothing more need be shown in order to demonstrate that such a body is a public authority within the meaning of Section 2(h) (b) or (c) of the RTI Act.

17. In that view of the matter, this Court concurs with the view expressed by the CIC that the Petitioner DSGMC is a public authority under Section 2(h) of the RTI Act.

18. However, considering that the above question of law had not earlier been examined for its correctness by this Court, this Court is of the view that the penalty of Rs.25,000/- levied on the General Manager of the Petitioner may have been a bit too harsh. In the circumstances, the penalty amount is reduced to Rs.5000/- in both petitions and directed to be paid by the Petitioner DSGMC itself to the CIC within a period of two weeks without recovering it from the salary of its General Manager.
19. The writ petitions are, accordingly, disposed of in the above terms. All the pending applications stand disposed of.

S. MURALIDHAR, J

JULY 22, 2010

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